

BILL ANALYSIS

C.S.H.B. 3660
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Juvenile Justice & Family Issues
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Municipal and justice courts reportedly adjudicate the highest volume of cases involving children in Texas, including approximately 50,000 such cases annually involving non-traffic Class C misdemeanors. It is further noted that, even though state law allows these cases to be adjudicated in the juvenile justice system as a civil matter, the vast majority of cases involving children between the ages of 10 and 16 years old are adjudicated in the criminal system. Youth diversion programs offer an alternative approach by encouraging problem-solving approaches to lower-level offenses by children, emphasizing the accountability and responsibility of the child and parents, and focusing on outcomes that are in the best interest of the child and the community, while reducing the likelihood of re-offense. C.S.H.B. 3660 seeks to reduce the burden placed on the municipal court system by increasing the availability of youth diversion programs for children who are alleged to have engaged in conduct that constitutes a Class C misdemeanor other than a traffic offense.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.H.B. 3660 amends the Code of Criminal Procedure to require a child who is alleged to have engaged in conduct that constitutes a Class C misdemeanor other than a traffic offense to be diverted from formal criminal prosecution as provided by the bill. The bill makes a child who is 15 years of age or older at the time the child is alleged to have engaged in conduct that constitutes an offense ineligible for such diversion if the child has previously had two unsuccessful diversions for unrelated offenses. The bill sets out certain diversion strategies and authorizes a diversion strategy to be imposed in connection with the following:

- a system of graduated sanctions imposed by a public school district before filing a criminal complaint against a child for certain school offenses; or
- the following diversions established by the bill:
 - a disposition or diversion by law enforcement;
 - an intermediate diversion from court; or
 - a diversion by a justice or judge.

C.S.H.B. 3660 establishes that its provisions relating to youth diversion do not preclude a case involving a child from being referred, adjudicated, or disposed of as conduct indicating a need for supervision and do not preclude a waiver of criminal jurisdiction and transfer of a child's case to a juvenile court.

C.S.H.B. 3660 establishes that a youth diversion plan is a written plan that describes the types of strategies that will be used to implement youth diversion and does not limit the types of diversion strategies that may be imposed under a diversion agreement. The bill requires each justice and municipal court to adopt a youth diversion plan and to implement the plan not later than September 1, 2022. The bill sets out provisions relating to the youth diversion plan, including an authorization for two or more local governments to collaborate in creating a regional youth diversion plan.

C.S.H.B. 3660 sets out provisions relating to the following:

- the optional designation or establishment of a court-designated youth diversion coordinator and a youth diversion advisory council, including a regional advisory council, established by a commissioners court of a county or the governing body of a municipality;
- authorization for a certain warning notice by a peace officer in lieu of taking a child into custody, issuing a citation, or filing a complaint for an offense under certain conditions, including the filing of the notice with a person designated in the youth diversion plan;
- authorization for peace officer disposition of a case in lieu of issuing a citation to a child or filing a complaint in a justice or municipal court, if youth diversion plan guidelines provide for such disposition;
- an optional first offense diversion program established by a commissioners court or municipality's governing body for the referral and disposition of a case before the filing of a charge for a first offense;
- a youth diversion agreement generally, an intermediate diversion from court before a case is filed and an agreement under such a diversion, and a required diversion by a justice or a judge after a case is filed and an agreement under such a diversion;
- a required non-adversarial hearing for a child who does not successfully complete the terms of a diversion and is referred to court, including the outcomes that may be imposed by a resulting court order;
- a local youth diversion administrative fee and the required maintenance by a justice or municipal court of statistics for each authorized diversion strategy; and
- the expunction of applicable records pertaining to a child.

C.S.H.B. 3660 amends the Family Code to exclude a child who is alleged to have engaged in conduct that constitutes a Class C misdemeanor other than a traffic offense from the applicability of the following:

- disposition of the child's case by a law enforcement officer without referral to juvenile court under guidelines adopted by the juvenile board of the applicable county; and
- a first offender program established by a juvenile board.

C.S.H.B. 3660 reenacts and amends Articles 44.2811 and 45.0217, Code of Criminal Procedure, as amended by Chapters 1257 (H.B. 528), 1319 (S.B. 394), and 1407 (S.B. 393), Acts of the 83rd Legislature, Regular Session, 2013, to conform to changes made by Chapter 1257 and to do the following:

- clarify that applicable records, files, and information relating to a criminal case for a fine-only misdemeanor, other than a traffic offense, committed by a child that is appealed are confidential and may not be disclosed to the public except as otherwise specified by applicable law; and
- authorize information relating to a child who is charged with, is convicted of, is found not guilty of, had a charge dismissed for, or is granted deferred disposition for a fine-only misdemeanor offense other than a traffic offense to be open to inspection by the following entities:
 - prosecutors and the staff of applicable judges or prosecutors;
 - a governmental agency if the disclosure is required or authorized by law or is for the purpose of maintaining statistical records of recidivism and for diagnosis and classification;

- an individual or entity to whom the child is referred for treatment or services if the agency or institution disclosing the information has entered into a written confidentiality agreement with the individual or entity regarding the protection of the disclosed information; or
- with leave of the justice or municipal court, any other person having a legitimate interest in the proceeding or in the work of the court.

C.S.H.B. 3660 amends the Code of Criminal Procedure to take the following actions with regard to procedures for justice and municipal courts:

- replace the authorization for a judge to allow a defendant who is a child to elect at the time of conviction to discharge the fine and costs by performing community service, receiving tutoring, or paying the fine and costs in a certain manner with a requirement for the judge to allow such a defendant to so elect, unless a diversion is required under the bill's applicable provisions;
- repeal provisions relating to community service in satisfaction of fine or costs for certain juvenile defendants younger than 17 years of age who are assessed a fine or costs for a Class C misdemeanor occurring in a building or on the grounds of the primary or secondary school at which the defendant was enrolled at the time of the offense;
- extend the applicability of provisions relating to community service in satisfaction of a fine or costs to include a defendant who is a child and revises those provisions, with regard to a child defendant, to limit community service hours to 20 and to include attending a tutoring program among the permissible forms of community service; and
- revise provisions relating to juvenile case managers as follows:
 - authorize an applicable local governmental entity, including a public school district, to contract for a juvenile case manager as an alternative to direct employment;
 - include cases involving youth diversion among the duties of the juvenile case manager and require the manager to give priority to those cases;
 - if the entity applies to the criminal justice division of the governor's office for reimbursement of costs relating to a contract for or employment of a juvenile case manager, require the entity to present a youth diversion plan to the office as a condition of eligibility; and
 - provide for the effect of an entity's joint employment of, contract for, or contribution to the costs of a juvenile case manager or juvenile case manager services, as applicable, on the determination of certain costs, fees, and fines in criminal proceedings.

C.S.H.B. 3660 extends the applicability of provisions relating to juvenile delinquency prevention funds to municipalities and requires municipal courts and justice courts to impose certain fines for purposes of those funds. The bill includes funding for youth diversion as an authorized use of funds from a juvenile delinquency prevention fund and as an authorized use of certain child safety funds in certain municipalities.

C.S.H.B. 3660 applies only to an offense committed on or after September 1, 2022, and establishes that an offense was committed before that date if any element of the offense occurred before that date.

C.S.H.B. 3660 amends the Local Government Code to make conforming changes.

C.S.H.B. 3660 repeals the following provisions:

- Article 45.0492, Code of Criminal Procedure, as added by Chapter 227 (H.B. 350), Acts of the 82nd Legislature, Regular Session, 2011;
- Article 45.0492, Code of Criminal Procedure, as added by Chapter 777 (H.B. 1964), Acts of the 82nd Legislature, Regular Session, 2011;
- Article 42.15(f), Code of Criminal Procedure; and
- Section 52.031(a-1), Family Code.

EFFECTIVE DATE

September 1, 2021.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 3660 may differ from the original in minor or nonsubstantive ways, the following summarizes the substantial differences between the introduced and committee substitute versions of the bill.

The substitute removes certain details of the diversion strategies in the original regarding an alcohol awareness program, a tobacco awareness program, and a drug education program.

The substitute does not include provisions in the original requiring the clerk of a justice court or municipal court to collect a juvenile delinquency prevention and graffiti eradication fine from a defendant convicted of a graffiti offense.